Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 12

(T.D. 85-3)

Customs Regulations Amendment Relating to Honeybees and Honeybee Semen

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to honeybees and honeybee semen. The amendment is part of a joint Department of Agriculture-Treasury proposal to revise current regulations to reflect amendments to the Honeybee Act. This amendment will allow Treasury, through Customs, and in conjunction with Agriculture, through the Animal and Plant Health Inspection Service, to enforce the provisions of the Honeybee Act which now regulates not only the importation of honeybees but also honeybee semen.

EFFECTIVE DATE: February 8, 1985.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8651).

SUPPLEMENTARY INFORMATION:

Background

Section 12.32, Customs Regulations (19 CFR 12.32), currently provides that honeybees may be imported into the United States by the Department of Agriculture for experimental or scientific purposes. Importation of honeybees for any other purpose is prohibited unless the Secretary of Agriculture has determined that the importation is from a country in which no diseases dangerous to honeybees exist. Section 12.32 additionally states that the importation of honeybees is to be governed by joint regulations of the Secretary of Agriculture and the Secretary of the Treasury.

The current Customs Regulations set forth in 19 CFR 12.32 and the U.S. Department of Agriculture (USDA) regulations set forth in 7 CFR Part 32, pertaining to the importation of honeybees, reflect the provisions of the Honeybee Act (7 U.S.C. 281 et seq.), before it was amended in 1976 by Pub. L. 94-319. The amended Honeybee Act now regulates not only the importation of honeybees, but also honeybee semen.

In a document published by the USDA in the Federal Register on May 14, 1984 (49 FR 20299), a proposal was set forth to revise current Agriculture regulations to reflect amendments to the Honeybee Act. The amended Honeybee Act provides that honeybees may be imported into the U.S. by the USDA for experimental or scientific purposes. Proposed criteria for the importation of honeybees and honeybee semen were set forth as well. The Honeybee Act further allows honeybees and honeybee semen to be imported under such rules and regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe. These joint regulations are enforced by Treasury, through Customs, and in conjunction with the Animal and Plant Health Inspection Service (APHIS) of the USDA.

So that the Customs Regulations conform with those of USDA by a notice published in the Federal Register on May 14, 1984 (49 FR 20305), Customs also proposed an amendment to section 12.32 to regulate not only the importation of honeybees, but also honeybee semen.

Section 12.32, as amended, will provide that honeybee semen may be imported into the U.S. only from countries determined by the Secretary of Agriculture, to be free of undesirable honeybees, and which take adequate precautions to prevent the importation of undesirable honeybees and their semen.

Discussion of Comments

Only one comment was received in response to the Customs notice. The comment concerned a matter to be resolved by USDA, not Customs. It has no bearing on the Customs Regulations. Accordingly, after a further review of the matter, Customs has determined to adopt the proposal as described in the notice.

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable

because the rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The prinicipal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 12

Bees.

Amendment to the Regulations

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below

Alfred R. De Angelus,
Commission of Customs.

Approved: December 2, 1984.
John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 9, 1985 (50 FR 1043)]

PART 12—SPECIAL CLASSES OF MERCHANDISE

Section 12.32 is revised to read as follows:

§ 12.32 Honeybees and honeybee semen.

(a) Honeybees from any country may be imported into the United States by the Department of Agriculture for experimental or scientific purposes. All other importations of honeybees are prohibited except those from a country which the Secretary of Agriculture has determined to be free of diseases dangerous to honeybees.[19]

(b) Honeybee semen may be imported into the United States only from countries determined by the Secretary of Agriculture to be free of undesirable honeybees, and which take adequate precautions to prevent the importation of undesirable honeybees and their semen.

(c) The importation of honeybees and honeybee semen is governed by joint regulations of the Secretary of Agriculture and the Secretary of the Treasury published in Treasury Decisions and the Federal Register from time to time.

(R.S. 251, as amended, sec. 1, 42 Stat. 833, as amended, 90 Stat. 709, sec. 624, 46 Stat. 759 (7 U.S.C. 281, 19 U.S.C. 66, 1624))

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19 CFR Part 177

(T.D. 85-4)

Tariff Classification of Television Camera Lens Systems

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Continuation of practice.

SUMMARY: This document advises the public of Customs decision to continue an established and uniform practice of classifying certain television camera lens systems as parts of television cameras in the Tariff Schedules of the United States. The proposed change of practice, which would have resulted in the classification of this merchandise under the tariff provision for optical appliances and instruments at a higher rate of duty, had not been adopted. Customs has made the decision to continue the current practice based on public comment and pertinent judicial decisions.

EFFECTIVE DATE: January 9, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce N. Shulman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1982, a notice was published in the Federal Register (47 FR 35234), advising the public that Customs was reviewing its current established and uniform practice of classifying certain television camera lens systems under the provision for parts of television cameras in item 685.10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). Pursuant to § 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)), Customs requested comments on its proposal to reclassify that merchandise under the provision for optical appliances and instruments in item 708.89, TSUS, at a higher rate of duty.

As indicated in the notice, in *Rank Precision Industries, Inc.* v. *United States,* C.D. 4866 (1980), the United States Customs Court (now the United States Court of International Trade) held that the Varotal 30 optical-electro-mechanical television camera lens system is specifically provided for as an optical appliance or instrument under item 708.89, TSUS. Subsequently, the United States Court of Customs and Patent Appeals (now the United States Court of Appeals for the Federal Circuit), in *Rank Precision Industries, Inc.* v.

United States, C.A.D. 1269 (1981), reversed the Customs Court on other grounds.

Analysis of Comments

Eleven comments were received in response to the notice. All were opposed to the change of practice. The commenters urged that the television camera lens system in question should continue to be classified as parts of television cameras under item 685.10, TSUS, rather than as optical appliances and instruments under item 708.89 TSUS. In support of their contention, the commenters suggest that the subject merchandise is used as a television camera part, not as an optical appliance or instrument, and that it consists of electrical and mechanical components with no other separate utility.

Furthermore, it contended that the Customs Court decision in *Rank* relied upon by Customs does not mandate changing the prior practice of classifying the Varotal lens system. The argument is advanced that, inasmuch as the Customs Court was reversed by the Court of Customs and Patent Appeals, there was no basis for Customs decision to change the practice of classifying the subject television camera lens system.

After studying the comments submitted in response to the notice, Customs believes that the lens in question is essential to the operation of large studio-type television cameras. It appears that the Varotal 30 lenses have no use other than with bulky studio-type cameras. It is a well-established rule that a "part" of an article is something necessary to the completion of that article. It is an integral constituent, or component part without which the article to which it is to be joined could not function as such article. *Welte & Sons* v. *United States,* T.D. 34249 (February 27, 1914). Applying these principles to the instant merchandise, we conclude that the large studio-type television cameras are incomplete and cannot function in their intended purpose without the use of the highly sophisticated electro-mechanical Varotal 30-type lens system as an essential part of the television camera.

Continuation of Practice

After further review of this matter, the Customs proposal to classify Varotal 30 television camera lens systems under the provision for optical appliances and instruments in item 708.89, TSUS, has not been adopted. Accordingly, Customs will continue its established and uniform practice of classifying the camera lens system in question as parts of television cameras under item 685.10, TSUS.

Drafting Information

The principal authors of the document were Todd J. Schneider and Larry Burton, Office of Regulations and Rulings, U.S. Customs

Service. However, personnel from other Customs offices participated in its development.

Dated: January 4, 1985.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, January 9, 1985 (50 FR 1044)]

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19 CFR Part 141

[T.D. 85-5]

Notice of Rulemaking Relating to Entry Type Codes

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document informs the public of changes in the assignment and format of entry type codes used by the international trade community in submitting entry documentation for processing by the Customs Service. The changes are one of the numerous initiatives Customs has undertaken relating to the development of a comprehensive integrated Automated Commercial System. When fully implemented, the changes will ensure entry processing efficiency.

EFFECTIVE DATE: February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Richard J. Bonner, Duty Assessment Division (202-535-4155), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated Automated Commercial System (ACS). When fully developed, this system will provide an efficient means for accomplishing the current and future entry processing needs of Customs, other government agencies, and the international trade community. Currently, many formal entries received by Customs are prepared on computers. More international trade businesses are planning to use computers as part of automating the preparation of import documentation.

To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of entry type codes and entry numbers are desirable.

Accordingly, by notice published in the Federal Register on January 13, 1984 (49 FR 1740), Customs proposed new procedures for both entry type codes and entry numbers and invited interested

parties to submit comments. Although comments were received on both procedures, those comments relating to the entry number proposal are still being analyzed. They will be the subject of a future document. This document contains only the analysis of comments concerning the proposed procedure for entry type codes.

The existing entry type codes, which were also published in the notice, have emerged over many years and serve to identify only a few of the many entry types. They are more related to categories that are of statistical interest than to types which distinguish Customs processing requirements. Many entry types such as informals, quota, and temporary importation bond cannot be specifically identified with this entry type code procedure.

There is a need to adopt a simple, flexible entry type code structure which will allow Customs to identify entry transactions by their processing requirements.

The proposed table of two-digit entry type codes which appeared in the notice uniquely identifies all current entry types and provides adequate room for additional types in the future. The first digit of the code identifies the general category of entry (i.e., consumption=0, informal=1, warehouse=2, etc.). The second digit further defines the specific processing type within the entry category (i.e., consumption quota=02, informal free and dutiable=11, etc.).

It is expected that the new codes will provide for all possible entry types. However, in the event of a transaction which does not appear to be covered, entry preparers are urged to contact Customs for clarification. If Customs is unable to determine a specific entry type, Special Entry Processing Code 99 will be temporarily used for processing until such time as Customs can provide a specific entry type code.

Once effective, all entry preparers must show the applicable two-digit code on the appropriate Customs entry forms including the entry summary document, Customs Form 7501. The February 1, 1985, effective date will correspond with the mandatory effective date of the revised Customs Form 7501 set forth in T.D. 84-129 published in the Federal Register on June 5, 1984 (49 FR 23161).

Discussion of Comments

Several of the seven commenters than responded to the notice raised issues concerning the use of the air waybill number as part of the Customs entry number, and the assignment of the entry filer codes. These issues relate only to the entry number proposal and are still being analyzed. Once these issues are resolved, Customs will publish another document on the entry number procedure.

One commenter requested that a longer time period be allowed for full implementation of the changes than was suggested in the notice. It is noted that many entry filers are already using the codes on a voluntary basis. Use of the codes at the earliest possible

date is extremely important to ensure entry processing efficiency, for both Customs and entry preparers. Accordingly, use of the codes will be mandatory on all applicable entry documentation after February 1, 1985.

One commenter stated that a number of airlines presently have large stocks of cargo manifests containing a preprinted block for Immediate Transportation, Transportation and Exportation, or Immediate Exportation in-bond shipments. These airlines hoped to continue the use of such cargo manifests until existing supplies are consumed.

To accommodate these concerns, Customs has determined that these entry forms, preprinted with words that identify the entry type, may be used until existing supplies are exhausted provided that the appropriate two-digit entry type code is printed in the entry type block.

Another commenter observed that there is no entry type provided for quota entries which also include countervailing or antidumping duties.

Customs agrees. To remedy this situation, consumption category entry type code 07 (countervailing and/or antidumping and quota) and warehouse withdrawal category entry type code 38 (countervailing and/or antidumping and quota) have been added to the list of entry type codes.

In addition to the changes suggested by the commenters, Customs has made four additional changes to the entry type codes. For clarification, the description of entry type 33 has been changed from "Aircraft and Vessel Supply" to "Aircraft and Vessel Supply for Immediate Exportation". The description for entry type 36 has been changed from "For Exportation" to "For Immediate Exportation" so that the terminology is consistent with entry type 63. Finally, to provide more specificity for transportation entry types on Customs Form 7512–C (Transportation Entry), the description for entry type 64 has been changed from "Transit" to "Barge Movement" and the following entry types added; entry type 65 with the description "Permit to Proceed", and entry type 66 with the description "Baggage".

Accordingly, after consideration of all the comments and a further review of the matter, Customs has determined to adopt the amendments relating to entry type codes as follows:

CUSTOMS ENTRY TYPE CODES

Entry type	Entry type code
Consumption Entries:	
Free and Dutiable	01

CUSTOMS ENTRY TYPE CODES—Continued

Entry type	Entry type code
Quota	02
Countervailing Duty and/or Antidumping Duty	03
Appraisement	04
Vessel Repair	05
Foreign-Trade Zone (Consumption)	06
Countervailing and/or Antidumping and Quota	07
Informal Entries:	
Free and Dutiable	11
Quota	12
Warehouse Entries:	
Warehouse	21
Re-warehouse	22
Temporary Importation Bond (TIB)	23
Trade Fair	24
Permanent Exhibition	25
Foreign-Trade Zone (Admission)	26
Warehouse Withdrawal:	
For Consumption	31
Quota	32
Aircraft and Vessel Supply for Immediate Exportation	33
Countervailing Duty and/or Antidumping Duty	34
For Transportation	35
For Immediate Exportation	36
For Transportation and Exportation	37
Countervailing and/or Antidumping and Quota	38
Drawback Entries:	
Manufacturing	41
Same Condition	42
Rejected Importation	43
Government Entries:	
Defense Contract Importation (DCASR)	51
Dutiable	52
Free	53
Transportation Entries:	
Immediate Transportation	61
Transportation and Exportation	62
Immediate Exportation	63
Barge Movement	64
Permit to Proceed	65
Baggage	66

CUSTOMS ENTRY TYPE CODES—Continued

Entry type	Entry type code
Special Processing Entries:	
Special Entry Processing	99

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the changes set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

AUTHORITY

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624).

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: December 20, 1984.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 11, 1985 (50 FR 1499)]

U.S. Customs Service

General Notices

19 CFR Part 103

Access by Press to Information on Import Manifests

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Solicitation of comments.

SUMMARY: Members of the press have requested the Customs Service to permit access to manifests of merchandise imported into the U.S. by truck, rail, or aircraft on the same basis that the press has access to vessel manifests under § 103.14, Customs Regulations (19 CFR 103.14). Inasmuch as the commercial sensitivity, if any, of information contained on the manifests is best known by the parties to the involved commercial transactions, Customs requests written comments from any interested parties as to their views on access to, and releasibility of, information on the manifests to members of the press.

DATE: Comments must be received on or before March 4, 1985.

ADDRESS: Written comments should be addressed to and may be reviewed at the U.S. Customs Service, Attention: Regulations Control & Disclosure Law Division, 1301 Constitution Avenue, NW., Room 2325, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Doris B. Robinson, Regulations Control and Disclosure Law Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8681).

Dated: January 4, 1985.

B. JAMES FRITZ,
Director, Regulations Control
and Disclosure Law Division.

[Published in the Federal Register, January 10, 1985 (50 FR 1233)]

19 CFR Part 134

Country of Origin Marking of Pipe and Pipe Fittings of Iron or Steel

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Solicitation of comments.

SUMMARY: It has been brought to Customs attention that certain pipe and pipe fittings of iron or steel, cannot be marked with the proper country of origin by any of the methods prescribed by the recently enacted Trade and Tariff Act of 1984, without rendering such articles unfit for the purpose for which they are intended or violating industry standards for such articles. This document solicits public comments as to precisely which pipe and pipe fittings of iron or steel cannot be marked by any of the prescribed methods.

DATE: Comments must be received on or before February 25, 1985.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Tom Lindmeier, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that every article of foreign origin, or its container, imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently *as the nature of the article or its container will permit,* in such a manner as to indicate to an ultimate purchaser in the U.S. the English name of the country of origin of the article, unless specifically exempted. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304.

On October 30, 1984, the President signed Pub. L. 98-573, the Trade and Tariff Act of 1984. Section 207 of this law amends 19 U.S.C. 1304 requiring, without exception, that all pipe and pipe fittings of iron or steel be permanently marked to indicate the proper country of origin by means of die stamping, cast-in-mold lettering, etching, or engraving.

It has been brought to Customs attention that certain pipe and pipe fittings of iron or steel cannot be marked by any of the four

prescribed methods without rendering such articles unfit for the purpose for which they are intended or violating industry standards for such articles.

Under the laws of statutory construction, section 207 and 19 U.S.C. 1304, which it amends, should be read in *pari materia*, so that pipe and pipe fittings which by their nature will not permit marking by any of the four prescribed methods, will not be barred from entering the U.S. Such a construction would allow for alternative methods of marking, such as stenciling or tagging in bundles. Accordingly, this document solicits public comments as to precisely which pipe and pipe fittings of iron or steel cannot be marked by any of the means prescribed in § 207 of the Trade and Tariff Act of 1984 (i.e. die stamping, cast-in-mold lettering, etching, or engraving) without rendering such articles unfit for the purposes for which they were intended or violating industry standards for such articles.

It should be noted that Customs has already taken the position that the new marking requirements will apply to iron or steel pipes, tubes, and blanks therefor, as defined in Headnote 3(e), Schedule 6, Part 2, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), which covers tubular products, including hollow bars and hollow billets, of any cross-sectional configuration, by whatever process made, whether seamless, brazed, or welded, and whether with an open or lock seam or joint, of the kind classifiable under items 610.30–610.58, 688.30, TSUS. However, it does not include hollow drill steel of the kind defined in Headnote 3(e), Schedule 6, Subpart 2B, TSUS, and classifiable under items 607.05–607.09, TSUS. The new marking requirements of section 207 will also apply to pipe and tube fittings of iron or steel (bends, branches, drains, reducers, etc.) of the kind classifiable under items 610.62–620.93, 688.32, TSUS.

COMMENTS

Before taking any further action on this matter, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs

Headquarters. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 134

Customs duties and inspection, Imports.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: December 21, 1984.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 9, 1985 (50 FR 1064)]

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19 CFR Part 111

Notice of Sanctions for Failure to File Customs Brokers Triennial Reports

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: Section 212 of the Trade and Tariff Act of 1984, Pub. L. No. 98-473 (amending 19 U.S.C. 1641), continues the requirement that each person who is a licensed customs broker shall file a triennial report with the Secretary of the Treasury as to:

(A) Whether such person is actively engaged in business as a customs broker; and
(B) The name under, and the address at, which such business is being transacted.

The reporting requirement, previously found in 19 U.S.C. 1641(e), is now found in 19 U.S.C. 1641(g). Under the new law, the failure to file the requisite report by March 1 of the reporting year, results in automatic suspension, and possible revocation of the broker's license (19 U.S.C. 1641(g)(2)).

DATE: The next triennial report is to be filed on February 1, 1985. Notice is hereby given that failure to file the report (and the appropriate copies) as indicated below by March 1, 1985 will result in automatic suspension, and possible revocation, of the broker's license.

ADDRESS: In accordance with section 111.30(f), Customs Regulations (19 CFR 111.30(f)), the report shall be filed with the Commissioner of Customs, U.S. Customs Service, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Copies shall also be filed with the District Director of Customs in each district where the broker is licensed to transact Customs business.

FOR FURTHER INFORMATION CONTACT: Fred O'Brien, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: January 4, 1985.

JOHN P. SIMPSON,
Director, Office of
Regulations and Rulings.

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U.S. Customs Service

Proposed Rulemakings

19 CFR Part 18

Proposed Customs Regulations Amendments Relating to Liquidated Damages Claims Against Bonded Carriers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the liability of bonded carriers for shortages, irregular delivery, or nondelivery of merchandise. The purpose of the proposal is to assure uniform assessment of liquidated damages claims against carriers, as well as cartmen, for the shortage, irregular delivery, or nondelivery of bonded merchandise.

DATE: Comments must be received on or before March 12, 1985.

ADDRESS: Written comments (perferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: William Rosoff, Carriers, Drawback, and Bonds Division (202–566–5732). Operational Aspects: Kent Parsell, Inspection and Control Division (202–566–5354), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

By publication of T.D. 84–213 in the Federal Register on October 19, 1984 (49 FR 41152), the Customs Regulations (19 CFR Chapter I), were amended to revise the bond structure by consolidating and reducing the number of bond forms in use, to simplify transactions between Customs and the importing public, and to facilitate establishment of an efficient computerized bond control system.

Recent enforcement operations undertaken by Customs have indicated that penalty provisions for failure to deliver in-bond cargo are insufficient to protect the revenue and actually contribute to a

disregard of the in-bond regulations and procedures. One important element of the recently amended bond structure is an increase in the amounts chargeable for failure of deliver bonded merchandise, to an amount equal to the value of the cargo (three times the value in the case of restricted merchandise or liquor). The amendment provides that these amounts control unless another amount is authorized elsewhere in the regulations.

Section 18.8, Customs Regulations (19 CFR 18.8), provides specific liability amounts assessable against bonded carriers for shortage, irregular delivery, or nondelivery of bonded merchandise. These amounts are widely variant from those provided in T.D. 84-213 and, due to the stipulation appearing in that amendment concerning amounts otherwise authorized, are the amounts that are assessed in the event of a violation. Section 18.8 applies in the case of a violation by a bonded carrier. However, T.D. 84-213 is also applicable to bonded cartmen (one who transports goods or merchandise within the limits of a port). Thus, even though carriers and cartmen perform the same function, a disparity is created between their liability.

T.D. 84-213 stated that a complete review of the various regulatory provisions containing lesser liability amounts would be conducted (§ 18.8 among them), and that upon completion of that review, a proposal to modify any of the provisions would be published for public comment. However, due to an immediate need to insure protection of the revenue as well as the equal treatment of all concerned parties, we have determined to propose amendments to § 18.8 in advance of completion of the study.

List of Subjects in 19 CFR Part 18

Common carriers, Freight forwarders, Motor carriers, Surety bonds.

Proposed Regulations Amendments

It is proposed to amend Part 18, Customs Regulations (19 CFR Part 18), in the following manner.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. It is proposed to revise § 18.8(b) to read as follows: § 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

(a) * * *

(b) Carriers shall be liable for payment of liquidated damages under the carriers bond for any shortage, failure to deliver, or irregular delivery, as provided in such bond.

2. It is proposed to amend the second sentence of § 18.8(e)(1) by removing the word "computed" and the phrase "paragraphs (b) (1), (2), and (3) of."

AUTHORITY

This proposal is made under the authority of R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624; 49 U.S.C. 1509).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

EXECUTIVE ORDER 12291

This proposal is not a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: December 21, 1984.

JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 11, 1985 (50 FR 1545)]

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19 CFR Parts 18 and 114

Proposed Customs Regulations Amendments Related to Limitation of Liability of Domestic Guaranteeing Associations Under TIR Carnets and Other Matters

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Customs is considering amending its regulations relating to the limitation on liability of U.S. guaranteeing associations for shortages or improper deliveries of goods carried under the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets. The changes are made necessary by the accession of the U.S. to the latest of those Conventions.

In acceding to the TIR Convention, countries agree that standardized procedures will be observed in administering shipments of merchandise covered by Convention terms. The TIR Convention, to which the U.S. has acceded, places limits on the nature of a guaranteeing association's liability, as well as the dollar amount of that liability for shortages and irregularities in deliveries of merchandise. The proposed amendments reflect these latest changes, in addition to making other clarifying points, including the fact that the period of validity for A.T.A. carnets cannot be extended.

DATE: Comments must be received on or before March 12, 1985.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Arnold L. Sarasky, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8648).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Carnets are international customs documents, backed by an internationally valid guarantee, which may be used for the entry of articles under various customs procedures such as temporary importation and transportation in bond (transit). The carnet is used in place of the usual national customs documentation and guarantees the payment of duties (including taxes) which may become due

if the requirements under a particular customs procedure are not satisfied. The existence of a single international document rather than numerous national documents facilitates international commerce.

The Customs Convention on the International Transport of Goods Under Cover of TIR (International Road Transport) Carnets, 1959, TIAS 6633, represents the efforts of acceding nations to standardize their procedures regarding the movement of goods travelling under such carnets. The U.S. acceded to the 1959 TIR Convention, with the Customs procedures for administering the movement of goods under carnets being contained in Parts 18 and 114, Customs Regulations (19 CFR Parts 18 and 114). Most recently, the U.S. acceded to an updated version of the Convention done at Geneva, on November 14, 1975 (1975 TIR Convention), which agreement strictly limited the liability of guaranteeing associations (associations in the U.S. approved by the Commissioner of Customs to guarantee the payment of obligations shipped under a TIR carnet). To reflect the limits of liability of guaranteeing associations and to reference the 1975 TIR Convention, and to make clear that pursuant to Articles 4 and 5 of the A.T.A. Carnet Convention, the period of validity for A.T.A. carnets cannot be extended, it is necessary to amend Parts 18 and 114, Customs Regulations (19 CFR Parts 18, 114).

Section 18.6(d), Customs Regulations (19 CFR 18.6(d)), describes the procedure to be followed when merchandise covered by a carnet cannot be recovered intact following shortages, irregular delivery, or nondelivery of merchandise. The section now provides that the domestic guaranteeing association is liable for unspecified pecuniary penalties, liquidated damages, duties, and taxes. The proposal reflects the changes made by the 1975 TIR Convention by eliminating reference to pecuniary penalties and by limiting the liability of a guaranteeing association for duties, taxes, and amounts collected in lieu thereof, to $50,000 per TIR carnet. The initial bonded carrier in the U.S. would continue to be liable to Customs for all items beyond the liability of the domestic guaranteeing association. Thus, Customs would remain fully covered to protect the revenue of the U.S.

Section 18.8(e), Customs Regulations (19 CFR 18.8(e)), concerns the liability of domestic guaranteeing associations as well as the time limits for notifying such associations of shortages, irregular deliveries, and nondeliveries. The proposal eliminates all mention of guaranteeing associations' liability for anything other than duties, taxes, and amounts collected in lieu thereof, up to $50,000 per TIR carnet, and makes other minor changes as well to accurately reflect the terms of the 1975 TIR Convention.

Section 114.1(f), Customs Regulations (19 CFR 114.1(f)), provides the definition of a TIR Carnet for the purposes of Part 114, Customs Regulations, the portion of the regulations which described

the use of all manner of carnets. The proposal removes the outdated reference to TIAS 6633, the 1959 TIR Convention number. The 1975 TIR Convention has not been assigned a TIAS number.

Section 114.2(c), Customs Regulations (19 CFR 114.2(c)), states that the regulations in Part 114 relates to carnets provided for in the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, without designating any particular Convention. The proposal adds a citation to the 1975 TIR Convention.

Section 114.23(a), Customs Regulations (19 CFR 114.23(a)), provides that no A.T.A. Carnet (temporary admission carnet) with a period of validity exceeding one year from the date of issue shall be accepted. Constant inquiries are made as to whether the period of validity can be extended. The A.T.A. Carnet Convention (Articles 4 and 5) states that the period of validity cannot be extended under any circumstances, and the proposal makes this clear as well.

Section 114.31(b), Customs Regulations (19 CFR 114.31(b)), provides that merchandise which is restricted from temporary importation under bond is likewise restricted from entry under cover of an A.T.A. or E.C.S. carnet. The U.S. has denounced the E.C.S. convention and the proposal removes the reference to that Convention from the regulations.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

EXECUTIVE ORDER 12291 AND REGULATORY FLEXIBILITY ACT

Inasmuch as Customs does not believe that the proposal meets the criteria for a "major rule" within the meaning of § 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

It has not been determined whether the proposed regulation would have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–612). However, we will continue to review this matter and will consider any comments submitted thereon before issuing a final rule.

LIST OF SUBJECTS IN 19 CFR PARTS 18 AND 114

Customs duties and inspection, Imports.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66); section 624, 46 Stat. 759 (19 U.S.C. 1624).

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend Parts 18 and 114, Customs Regulations (19 CFR Parts 18 and 114), as set forth below:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. It is proposed to amend the first sentence of § 18.6(d) by removing the words "pecuniary penalties."

2. It is proposed to amend § 18.8(e)(1) to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * * * *

(e)(1) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for duties and taxes accruing to the United States, and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to $50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages on the initial bonded carrier, and sums assessed the guaranteeing association in lieu of duties and taxes for any shortage, irrgular delivery, or nondelivery shall be computed in accordance with subparagraphs (1), (2), and (3) of paragraph (b) of this section. If a TIR carnet has not been discharged, or has been discharged subject to a reservation, the guaranteeing association shall be notified within 1 year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge shall have been obtained improperly or fraudulently the period shall be 2 years. However, in cases which become the subject of legal proceedings during the above-mintioned period, no claim for payment shall be made more than 1 year after the date when the decision of the court becomes enforceable.

464-349 O - 1985 - 4

PART 114—CARNETS

1. It is proposed to amend § 114.1(f) by removing the designation "(TIAS 6633)."

2. It is proposed to amend § 114.2(c) to read as follows:

§ 114.2 Customs conventions.

* * * * * * *

(c) Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, done at Geneva on November 14, 1975, as well as the 1959 TIR Convention, TIAS 6633.

3. It is proposed to amend § 114.23(a) by adding a new sentence at the end thereof to read, "This period of validity cannot be extended."

4. It is proposed to amend § 114.31(b) by removing the words "or E.C.S."

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: December 21, 1984.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 11, 1985 (50 FR 1546)]

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19 CFR Part 6

Proposed Customs Regulations Amendments Relating to Entry and Clearance of Civil Aircraft

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the size, type of paper, and ink used on forms required for the entry and clearance of civil aircraft by Customs. These proposed changes are less restrictive than current standards. They are minor changes which would apply only to the forms involved. They would facilitate the procedures involved in entering and clearing civil aircraft without making any substantive changes in those procedures.

DATE: Written comments must be received on or before (60 days after publication in the Federal Register).

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Joseph O'Gorman, Office of Cargo Enforcement and Facilitation,

(202–566–8151). Legal Aspects: John Mathis, Carriers, Drawback and Bonds Division, (202–566–5706) U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 6.6(a), Customs Regulations (19 CFR 6.6(a)), currently provides that the size of Customs Form 7507 (General Declaration) and Customs Form 7509 (Cargo Manifest), required for the entry and clearance of civil aircraft, shall be approximately but not to exceed 8½ inches wide and 14 inches long. Additional specifications provided for in section 6.6(a) are that the forms shall be on white bond paper that will not discolor or become brittle within 20 years; that if these forms are dittoed or if the entries on them are to be dittoed, the paper must be substance 40, 17 inches by 22 inches, 1,000 sheet basis; if printed or typewritten, at least 25 percent rag, substance 26, 17 inches by 22 inches, 1,000 sheet basis. Also, these forms and the entries thereon must be dittoed, typewritten, or printed with ink, or dye that will not fade or "feather" within 20 years.

Section 6.6(b), Customs Regulations (19 CFR 6.6(b)), currently provides that these forms may be printed or dittoed by private parties, provided the forms so printed or dittoed conform to the official forms currently in use, with respect to size, wording arrangement, style and size of type, and paper specifications.

After a review of these requirements, Customs believes the specifications for these two forms are too restrictive, particularly with regard to their size. Therefore, Customs is proposing to reduce the size of the forms to 8½ inches by 11 inches, with a provision permitting the private printing of the forms up to a maximum size of 8½ inches by 14 inches. Customs recognizes that there also may be some justification, due to the exigencies of aircraft operation of which we are unaware, for permitting some minimum size that is smaller than 8½ inches by 11 inches. The proposed changes provide for these extenuating circumstances. In addition to the change in size specifications, Customs is also proposing to eliminate all restrictions with regard to the type of paper and ink used on the forms.

Customs does not believe that Annex 9 to the Convention on International Civil Aviation precludes any of the proposed changes. No restrictions on the type of paper or ink to be used for the forms exist. With regard to size, Annex 9 does not specify a size, but does provide specimen copies of forms in metric sizes equal to 8¼ inches by 11¾ inches. However, the size recommended by Annex 9 is not binding as evidenced by the fact that the present forms measure 8½ inches by 14 inches. Therefore, to reflect these desired changes, Customs is proposing amendments to § 6.6 (a) and (b).

EXECUTIVE ORDER 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to the proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 6

Air carriers, aircraft, Customs duties and inspection, imports.

PROPOSED AMENDMENTS

PART 6—AIR COMMERCE REGULATIONS

It is proposed to amend § 6.6 (a) and (b), Customs Regulations (19 CFR 6.6(a)(b)), to read as follows:

§ 6.6 Document; form.

(a) The forms described in §§ 6.7 and 6.8 shall be the primary documents required for the entry and clearance of the aircraft, passengers, crewmembers and merchandise carried thereon. The forms shall be approved by the Commissioner of Customs. The forms

shall be approximately 8½ inches wide and 11 inches long and shall be on white writing paper. If a document or the entries thereon are in a foreign language, a translation in English shall be furnished with the original and with each copy.

(b) The Customs forms described in §§ 6.7 and 6.8 are in the English language and are obtainable from district directors upon payment by the owner or operator of the aircraft. A small quantity of each of the forms shall be set aside by district directors for free distribution and official use. These forms may be printed by private parties, provided the forms so printed conform to the official forms currently in use with regard to working arrangement, style and size of type and quality of paper. While minimal variation in size of the forms is acceptable, the size of the forms shall not exceed 8½ inches wide and 14 inches long.

AUTHORITY

These changes are proposed under the authority of R.S. 251, sec. 624, 46 Stat. 759, secs. 904, 1109, 72 Stat. 787, 799, as amended, sec. 101, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, 49 U.S.C. 1474, 1509, Gen. Hdnote. 11, Tariff Schedules of the United States.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: December 21, 1984.

JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 11, 1985 (50 FR 1544)]

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19 CFR Part 101

Proposed Restatement of the New York Customs Region Geographical Boundaries

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the Customs Service field organization by restating the geographical boundaries of the New York Customs Region. No changes in the boundaries are proposed. The document is part of Customs continuing program to update and establish clear, well-defined geographical boundaries for all of the Customs regions. Interested parties are invited to comment on the matter before a final document is published.

DATE: Comments must be received on or before March 11, 1985.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control

Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to update and establish clear, well-defined geographical boundaries for all of Customs regions, Customs is proposing to amend § 101.3(b), Customs Regulations (19 CFR 101.3(b)), by publishing a restatement of the geographical boundaries of the New York Customs Region.

The New York Customs Region is comprised of three administrative areas which were created by T.D. 71-19, published in the Federal Register on January 20, 1971 (36 FR 946), namely the Kennedy Airport Area, the Newark Area, and the New York Seaport Area. There have been two changes in these areas since their inception. Richmond County, New York, was transferred from the Newark Area to the New York Seaport Area by T.D. 76-59, published in the Federal Register on February 27, 1976 (41 FR 8473). In addition, Morris County, New Jersey, was transferred from the then Region III (Baltimore), to the Newark Area of the New York Region by T.D. 78-130, published in the Federal Register on May 9, 1978 (43 FR 19832).

Although there has been no change in the configuration of the New York Region since 1978, a review was recently completed by Customs officials of the geographical limits of these areas. The three purposes for performing the review were to: (1) identify what the present limits are; (2) redefine the limits in terms that will assure that any future changes will be within Customs, rather than local government control; and (3) publish the new limits in a final document so that persons doing business in the region would be relieved of the complicated legal research now necessary whenever these limits come into question.

The document confirms and clearly delineates the region's existing boundaries. No changes are proposed. Upon final approval, the list of Customs regions, districts and ports of entry in §101.3(b), Customs Regulations, will be amended accordingly.

PROPOSED RESTATEMENT OF THE NEW YORK CUSTOMS REGION GEOGRAPHICAL LIMITS

The New York Customs Region includes three administrative areas; the Kennedy Airport Area, the Newark Area, and the New York Seaport Area. The proposed geographical limits of each of these areas are as follows:

Kennedy Airport Area

The geographical limits of the Kennedy Airport Area described in T.D. 71–19, published in the Federal Register on January 20, 1971 (36 FR 946), are defined as beginning at a point in the Atlantic Ocean at the foot of Beach 95th Street, Rockaway Beach, and proceeding north along the center line of Cross Bay Boulevard and its continuation, Woodhaven Boulevard, to Atlantic Avenue; then east along the center line of Atlantic Avenue to the Van Wyck Expressway; then north along the center line of the Van Wyck Expressway to Hillside Avenue (Route 24); then east along the center line of Hillside Avenue to 212th Street; then south along the center line of Route 24 (212th Street, Jamaica Avenue, and Hempstead Avenue) to the New York City limits, the boundary line between Queens and Nassau Counties; then along this boundary line to the Atlantic Ocean, and then along the shore line to the point of beginning. In addition, La Guardia Airport and the U.S. Naval Air Station at Floyd Bennett Field are designated as parts of the Kennedy Area. The Area also encompasses a peripheral zone of variable extent (up to several miles in width) to accommodate various related trade facilities, such as container stations, warehouses, etc.

Newark Area

The geographical limits of the Newark Area described in T.D. 71–19, published in the Federal Register on January 20, 1971 (36 FR 946), and amended by T.D. 76–59, published in the Federal Register on February 27, 1976 (41 FR 8473), and T.D. 78–130, published in the Federal Register on May 9, 1978 (43 FR 19832), consist of the counties of Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Sussex, and Union in the State of New Jersey. The port of Perth Amboy, which is located approximately 30 miles south of Regional Headquarters, is organizationally aligned to report to the Newark Area. The port limits of Perth Amboy have been established as conterminous with the boundaries of Middlesex and Monmouth Counties.

New York Seaport Area

The geographical limits of the New York Seaport Area described in T.D. 71–19, published in the Federal Register on January 20, 1971 (36 FR 946), and amended by T.D. 76–59, published in the Federal Register on February 27, 1976 (41 FR 8473), include all that part of the State of New York not encompassed by the Kennedy Airport Area, the Buffalo-Niagara Falls district, and the Ogdensburg district. The port of Albany, which is located approximately 155 miles north of Regional Headquarters, is organizationally aligned to report to the New York Seaport Area. The port limits of Albany are the corporate limits of the city but also encompass the airport enclave outside the city limits.

To ensure the most efficient utilization of the inspectional complements deployed in the vicinity of New York City and those in Albany, a jurisdictional boundary has been established between New York and Albany activities at 41°42' North Latitude. This is an imaginary line just north of the Mid-Hudson Bridge near Poughkeepsie, N.Y., which extends west to traverse the municipalities of Highland, Ellenville, Greenfield Park, Woodridge, Fallsburg, Harris, Fosterdale, or their immediate vicinities and, in an easterly direction, to the north of Arlington, Moore's Mills, Dover Furnace, or their environs. South of the demarcation line, inspectional coverage is the responsibility of the Chief, Inspection Branch, New York Seaport Area; north of the line, it is the responsibility of the Port Director at Albany. (Manual Supplement II-S-3254, dated December 29, 1978).

Where questions arise as to the concept of "port limits" in respect of Customs Transactions under the jurisdiction of the New York Seaport and Newark Areas (exclusive of Albany and Perth Amboy), the port limits are construed to be coextensive with the boundaries of the so-called "Port of New York District" which was created by an agreement between the State of New York and the State of New Jersey, consented to by Congress, and precisely defined in 42 Stat. 175f, approved August 23, 1921 (T.D. 40809, dated April 25, 1925).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6 Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Headquarters, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

AUTHORITY

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449).

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Imports, Organization.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities.

EXECUTIVE ORDER 12291

Because the proposed amendment relates to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291, this proposal is not subject to the Executive Order.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: December 21, 1984.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 11, 1985 (50 FR 1063)]

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19 CFR Part 4

Proposed Customs Regulations Amendments Relating to Passengers on Foreign Vessels Taken on Board and Landed in the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Customs is considering amending its regulations relating to the transportation of passengers by a foreign vessel between ports or places in the U.S. either directly or by way of a foreign port. The proposed amendment provides that, with certain exceptions, such transportation is prohibited when passengers are actually embarked at one port or place in the U.S. and disembarked at another port or place in the U.S. This proposal would more accurately reflect the scope and intent of the coastwise trade passenger statute which contains no provision for exceptions based upon the

number of hours a vessel is in port, such as is provided in the current regulation. The prohibition would not apply when passengers are so transported between such ports or places on a voyage touching foreign ports other than nearby foreign ports. The proposed amendment would simplify the administration of the statute for Customs, be of benefit to the economy of certain of the American coastwise ports affected, and in no way erode the statutory protection given to American vessels engaged solely in domestic trade.

DATE: Comments must be received on or before March 11, 1985.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Edward B. Gable, Jr., Director, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5732).

SUPPLEMENTARY INFORMATION:

Background

Title 46, United States Code, section 289 provides that no foreign vessel shall transport passengers between ports or places in the U.S., either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed.

Section 4.80a, Customs Regulations (19 CFR 4.80a), provides that a foreign vessel which takes a passenger on board at a port in the U.S., its territories, or possessions embraced within the coastwise laws ("coastwise port") will be deemed to have landed that passenger in violation of the coastwise laws (46 U.S.C. 289): (1) if the passenger goes ashore, even temporarily, at another coastwise port on a voyage to one or more coastwise ports but touching at a "nearby foreign port or ports" (as defined in § 4.80a(c), Customs Regulations (19 CFR 4.80a(c)), but at no other foreign port, and (2) if during the course of the voyage the vessel remains in the coastwise port (not including the port of embarkation) for more than 24 hours, without regard to whether the passenger ultimately severs his connection with the vessel at the port at which he embarked. The 24-hour rule of § 4.80a(2) does not apply to a trip on which the vessel would at some time touch at a foreign port other than a "nearby foreign port," for example, a port in Europe or in South America.

The essence of the 24-hour rule was originally stated in T.D. 55147(19) of June 3, 1960 (95 Treasury Decisions 297), because it was believed at that time that it was necessary to implement a workable administrative rule of interpretation by which to effectively and efficiently ascertain violations of the coastwise passenger statute, 46 U.S.C. 289.

Customs has been advised that certain American coastwise ports, such as those in Alaska, Florida, and Puerto Rico, are placed in a disadvantageous position in their competition with nearby foreign ports for tourist business due to present § 4.80a(a)(2) and that the net result is to hurt the economy of these American ports by depriving them of revenue. It has been recommended that the 24-hour limit be extended to permit foreign-flag vessels from U.S. ports to be able to land passengers at other U.S. ports for longer periods.

The references in § 4.80a to a 24-hour rule and nearby foreign ports are the result of attempts by Customs to apply an Attorney General's opinion dated February 26, 1910 (28 O.A.G. 204). In that case, a foreign-flag vessel transported 615 passengers between New York and San Francisco. However, the Attorney General stated that since the passengers were so transported on a cruise around the world, the primary object of the passengers was to visit various parts of the world on a pleasure tour and then return home via California, not to be transported in domestic commerce, and therefore the transportation was not in violation of 46 U.S.C. 289.

The 1910 Attorney General's opinion was extended to voyages touching at foreign ports other than nearby foreign ports, as defined in § 4.80a(c), Customs Regulations, by T.D. 68–285 (33 FR 16558, November 14, 1968). On the other hand, voyages solely to one or more coastwise ports have always been considered predominately coastwise in their nature and object and therefore passengers on such a voyage temporarily going ashore at a coastwise port have been deemed to have been disembarked in violation of the statute. An example of such voyage would be one including only coastwise ports in California and Hawaii.

The terms "embark" and "disembark" are trade words of art which normally mean going on board a vessel for the duration of a specific voyage and leaving a vessel at the conclusion of a specific voyage. In this normal context the words do not contemplate temporary shore leave for any specified number of hours during a voyage. It is believed that the use of the terms in the proposal will follow the intent of Congress and clarify the scope of the regulation. That the statutory language "so transported and landed" means the final and permanent disembarking is further shown by 4 Attorney General Opinions as follows:

1. 28 O.A.G. 204, February 26, 1910, citing a statement by the Chairman of the interested House committee at the time that the legislation relates to "the conveyance of passengers between ports of the United States";

2. 29 O.A.G. 318, February 12, 1912, stating that the words of the statute "imply a transportation beginning at one port or place in the United States and ending at another port therein";

3. 30 O.A.G. 44, February 1, 1913, covering the application of the statute to passengers joining a vessel in a port of the U.S. and "dis-

embarking at the port of New York" and referring to the passengers' "ultimate destination, New York, and landed there"; and

4. 36 O.A.G. 352, August 13, 1930, covering the application of the statute to passengers on a vessel which "would transport them from San Francisco to Honolulu" even though the passengers "later embarked" on another vessel for a foreign country.

To assist Customs in gauging the degree of interest in adjusting the 24-hour rule, an advance notice was published in the Federal Register on April 25, 1984 (49 FR 17769), inviting public comment. After consideration of the comments received in response to the notice, which are discussed in this document, it was determined to propose the amendment to § 4.80a, Customs Regulations, set forth below.

Discussion of Comments

As a result of the advance notice, 193 responses were received from national, state, and local government officials; chambers of commerce; port authorities; unions; trade associations; vessel operators; individuals; and various miscellaneous sources. Those responding demonstrated overwhelming support for the proposal, with only 10 negative comments.

Of those opposing the proposal, 8 state that the present 24-hour rule, and/or the proposed liberalization of that time limit, are contrary to the intent of the Congress in enacting the coastwise passenger statute.

As stated in the advance notice, the essence of the 24-hour rule was originally stated in T.D. 55147 (19), June 3, 1960 (95 Treasury Decision 297). Customs is satisfied, after administering the 24-hour rule for a quarter of a century, that it is not contrary to the intent of the statute, which is to reserve for American-flag vessels the transportation of passengers from one U.S. port to another U.S. port. Further, the proposal will not change the present prohibition on the transportation of passengers on foreign vessels solely on voyages between coastwise ports. At present, passengers embarking on a foreign vessel touching nearby foreign ports who go ashore temporarily at a subsequent U.S. port where the vessel remains for more than 24 hours are considered transported in violation of the coastwise laws. In addition to causing administrative problems for Customs, the 24-hour rule hurts the economy of the subsequent U.S. port since the net result is that passengers temporarily going ashore will spend 24 hours or less in the U.S. port and much more time in the nearby foreign ports visited by the vessel. The proposal is limited to providing that on such a voyage, the passengers going ashore will only be in violation of the coastwise laws if they disembark at the subsequent U.S. port, i.e., do not come back on board the vessel and depart with it when it leaves the port.

One commenter states that while the present 24-hour rule is generally in conformity with the purpose of the statute, adoption of

the proposal "will be abandoning a straight forward verifiable regulation and substituting a vague and ambiguous regulation which is not adequately enforceable."

Customs does not believe the proposal is vague and ambiguous, but in an effort to address such concerns, the proposal has been stated in a different format in this document. Passengers who embark at a U.S. port on a foreign vessel touching nearby foreign ports who disembark at a subsequent U.S. port will still be considered to have been transported in violation of the coastwise laws. Passengers who embark at a U.S. port on a foreign vessel touching only U.S. ports who disembark or go ashore temporarily at a subsequent U.S. port will still be considered to have been transported in violation of the coastwise laws. However, passengers who embark at a U.S. port on a foreign vessel touching nearby foreign ports who go ashore temporarily at a subsequent U.S. port but reboard the vessel and leave with it when it leaves the port will not be deemed to have been transported in violation of the coastwise laws. Customs has the ability and the experience to enforce this requirement.

One commenter states that the proposal will yield little in the way of "benefits at local areas", that grave injury would be caused to certain named American-flag vessels, that certain environmental problems would result, and that foreign-flag vessels would not have to observe various regulations applicable to American-flag vessels (e.g., Immigration and Naturalization Service requirements, license fees for musical performances on board, Coast Guard safety standards, public health requirements, gambling regulations, and sewage treatment requirements).

Customs disagrees with the various points made by this commenter. The affirmative comments received from local, state and federal government representatives, chambers of commerce, port authorities, and various associations, companies and private individuals, make it clear that the proposal will be of major benefit to American interests at U.S. ports. Under the proposal, the U.S.-flag vessels that are named that are engaged in the transportation of passengers on voyages solely between U.S. ports would not be in danger of competition from foreign vessels operating on similar itineraries. The proposal does not relate to passengers being transported on voyages solely between U.S. ports, including passengers so transported who temporarily go ashore at intervening U.S. ports. Such transportation of passengers is reserved to U.S.-built U.S.-flag vessels and this would not be changed under the proposal. Further, under no circumstances does the proposal mean that foreign vessels would not have to comply with all applicable laws and regulations, including those relating to the above-mentioned subjects, including all applicable environmental requirements.

Another commenter states that the proposal would be a radical departure from the statutory intent, citing the legislative history of

46 U.S.C. 289 as evidence that Congress viewed the statutory restriction as "absolutely necessary to enable American vessels to do any of the passenger traffic." The language quoted in the comment is from a statement by Senator Frye of Maine when the U.S. Senate had under consideration an amendment of 46 U.S.C. 289 (31 Cong. Rec. 1610 (1898)). The amendment was solely to increase the statutory penalty from $2 to $200. The Senator was pointing out that American vessels could lose business to foreign vessels is foreign vessels could engage in the prohibited coastwise trade of the U.S. by simply paying a $2 penalty. The Senator said "Canadian vessels would be delighted to pay the United States $2 for every violation of the law and take our passenger trade." Customs does not believe that the quoted statement of the Senator is the legislative history of Congressional intent regarding the present proposal.

The comment also refers to the Attorney General's opinion of February 26, 1910 (28 O.A.G. 204), cited earlier in this document, which is the authority for considering the primary object of passengers. The comment states that "a 70-year-old opinion . . . should not be persuasive" and that Customs should "effectively overrule 28 O.A.G. 204." Customs agrees with the Attorney General's opinion. Passengers who embark on a foreign vessel at a coastwise port, e.g., San Francisco, and proceed with the vessel on a voyage touching a distant foreign port, e.g., Yokohama, Japan, and eventually disembark at a coastwise port other than the port of embarkation, e.g., Los Angeles, will not be deemed to have been transported in violation of the coastwise law.

Finally, a commenter states that the proposal totally disregards legislation enacted in 1979 relating to the U.S.-flag vessel UNITED STATES. The legislation referred to is Pub. L. 96–111, November 15, 1979, set forth in a note following 46 U.S.C. 1160. Among other things, it provides that on sale of the vessel by the Secretary of Commerce to a qualified operator, the vessel may be operated in the "coastwise commerce of the United States." The legislative history of the statute (Senate Report No. 96–298, August 2, 1979) indicates that, in part, the purpose of the law was to remove a cloud which a Court of Appeals decision had cast over the ability of the vessel to operate in the coastwise trade because it was built with the aid of a construction-differential subsidy. However, the legislative history shows that the Congress specifically considered 46 U.S.C. 289 and, of course, it must be assumed that Congress was aware of the 1910 Attorney General's opinion cited above and was aware of the 24-hour rule set forth in the Customs Regulations. Neither in the statute nor in the legislative history did Congress indicate any intention that foreign vessels could no longer operate under the 1910 Attorney General's opinion or the 24-hour rule because of the legislation relating to the vessel UNITED STATES. There is no indication in the legislative history that the Attorney General's opinion or the 24-hour rule might be contrary to 46

U.S.C. 289. Therefore, Customs does not believe that the 1979 legislation is any indication that the present proposal is contrary to 46 U.S.C. 289.

Another commenter states that a Customs officer would have to be stationed in every port to control foreign entry if the regulation is amended. Customs officers are stationed at all ports of entry.

A commenter states that American employment will be lost under the proposal. The favorable comments indicate that the proposal will generate many employment opportunities for Americans.

While one commenter did not object to the proposal itself, there was concern about the possibility, stated in the advance notice, that T.D. 55193(2), which relates to offshore fishing parties, would no longer be applied. For the reasons stated by the commenter, Customs agrees that T.D. 55193(2) relates to a unique problem and should be the subject of a separate study. Therefore, if the proposal is adopted, that T.D. will continue to be applied.

The remaining comments, all expressing strong support for the proposal, stated that the proposed change would allow ports encompassed by the coastwise laws to compete favorably with nearby foreign ports for the ever-increasing revenues generated by the cruise ship industry. The point was repeatedly made that substantial employment opportunities could be expected to be generated in U.S. coastwise port localities with adoption of the proposal, and that these beneficial aspects could all be realized without diluting the protection afforded American-flag vessels in the transportation of passengers from one U.S. port to another U.S. port.

After careful consideration of all the comments received in response to the advance notice, Customs has determined to propose amendments to § 4.80a which reflect the essence of those appearing in the advance notice, but in an improved format and with an explanation of the terms "embark" and "disembark" included.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 553), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Headquarters, Room 2426, 1301 Constitution Avenue NW., Washington D.C. 20229.

EXECUTIVE ORDER 12291 AND REGULATORY FLEXIBILITY ACT

Inasmuch as Customs does not believe that the proposal meets the criteria for a "major rule" within the meaning of § 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

Customs has determined that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–612). Therefore, a regulatory flexibility analysis is not required.

Accordingly, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Imports.

Authority

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66); sections 2, 3, 23 Stat. 118, as amended, 119, as amended (46 U.S.C. 2, 3); section 624, 46 Stat. 759 (19 U.S.C. 1624).

Drafting Information

The principal author of this document was Larry L. Burton, Esq., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Proposed Amendments to the Regulations

It is proposed to amend Part 4, Customs Regulations (19 CFR Part 4), by revising § 4.80a to read as follows:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

* * * * * * *

§ 4.80a Coastwise transportation of passengers.

(a) The applicability of the coastwise law (46 U.S.C. 289) to a foreign vessel which embarks a passenger at a port in the U.S., its territories, or possessions embraced within the coastwise laws ("coastwise port") on a voyage touching at least one other coastwise port is as follows:

(1) If the passenger is on a voyage solely to one or more coastwise ports and the passenger disembarks or goes ashore temporarily at a coastwise port, there is a violation of the coastwise law.

(2) If the passenger is on a voyage to one or more coastwise ports and a nearby foreign port or ports (but at no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation, there is a violation of the coastwise law.

(3) If the passenger is on a voyage to one or more coastwise ports and a distant foreign port or ports (whether or not the voyage in-

cludes a nearby foreign port or ports) and the passenger disembarks at a coastwise port, there is no violation of the coastwise law provided that the passenger has proceeded with the vessel to a distant foreign port.

(b) For the purposes of this section a *nearby foreign port* is defined as any foreign port in North America, Central America, the West Indies (including the Bahama Islands but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curaçao). A port in the U.S. Virgin Islands shall be treated as a nearby foreign port for the purposes of this section. Any foreign port that is not a nearby foreign port is considered a *distant foreign port,* as that term is used in this section. For the purposes of this section the term *embark* is defined as a passenger going on board a vessel for the duration of a specific voyage and the term *disembark* is defined as a passenger leaving a vessel at the conclusion of a specific voyage. The terms *embark* and *disembark* are not applicable to a passenger going ashore temporarily at a coastwise port and then going back on board the vessel and departing with it when it leaves the port. The term *passenger,* as used in this section, is defined in § 4.50(b) of this chapter.

(c) The owner or charterer of a foreign vessel or any other interested person may request from Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, an advisory ruling as to whether a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289. Such a request shall be filed in accordance with the provisions of Part 177, Customs Regulations (19 CFR Part 177).

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: December 21, 1984.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 9, 1985 (50 FR 1060)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

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Decisions of the United States Court of International Trade

(Slip Op. 84-138)

SUGAR WORKERS UNION, LOCAL 180, PLAINTIFF, *v.* RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, DEFENDANT

Court No. 83-3-00346

Before: RE, *Chief Judge.*

MEMORANDUM OPINION AND ORDER

Plaintiff, on behalf of its members, challenges the Secretary of Labor's denial of certification of eligibility for benefits under the trade adjustment assistance program. Plaintiff moves to amend the administrative record to permit the inclusion of information allegedly submitted in support of its application for reconsideration of the Secretary's initial negative determination.

Held: Since section 284 of the Trade Act of 1974, 19 U.S.C. § 2273, requires the court to limit its review to the record on which the Secretary based his determination, the court cannot permit the record to be amended by the inclusion of the proffered information. In view of plaintiff's offer of new evidence, however, the court remands this action to the Secretary for further administrative reconsideration.

[Plaintiff's motion to amend the administrative record denied; action remanded.]

(December 28, 1984)

Caballero, Govea, Matcham & McCarthy (Anna M. Caballero on the motion) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch (*A. David Lafer* on the motion), for the defendant.

RE, *Chief Judge:* In this action, plaintiff seeks judicial review of the Secretary of Labor's determination denying certification of eligibility for trade adjustment assistance benefits for its members who were employed at Factory #1 of the Spreckels Sugar Division of Amstar Corporation. 48 Fed. Reg. 357 (1983).

Plaintiff has moved to amend the administrative record. It contends that, in connection with its application for reconsideration, certain information submitted to the Secretary was omitted from the certified record filed with the court. Specifically, plaintiff alleges that its President, Robert L. Frazier, attached to plaintiff's application for administrative reconsideration excerpts from the September 1980 and December 1981 Sweetner and Sugar Report (Sweetner Report) published by the United States Department of Agriculture. After the granting of the application for reconsideration, Mr. Frazier, on November 24, 1982, submitted additional materials in support of plaintiff's petition for certification which included: (1) material taken from "testimony given on the General Farm Bill of 1981" before the United States House of Representative's Committee on Agriculture, Subcommittee on Cotton, Rice, and Sugar; and (2) a copy of the President's determination pertaining to sugar imports from the European Economic Community, under section 301 of the Trade Act of 1974.

Defendant opposes plaintiff's motion on the ground that plaintiff, in effect, is attempting to supplement the administrative record with material sent to the Secretary after the granting of plaintiff's application for reconsideration. In opposing the motion, defendant has submitted an affidavit from Marion Fooks, Director of the Office of Trade Adjustment Assistance, which states that the files of the Department of Labor do not contain Mr. Frazier's November 24, 1982 submission, or any indication that the Department received it. Thus, defendant concludes that, since the submission was not a part of the record on which the Secretary based his denial of certification, the record may not be amended to include the proffered information. The defendant maintains that to include that information would contravene 28 U.S.C. § 2640(c), the statute governing judicial review in trade adjustment assistance cases, as well as prior case law.

Subsequent to the filing of plaintiff's motion, defendant supplied the court with the Sweetner Report which defendant maintains was "inadvertently omitted" from the certified administrative record. In view of defendant's filing of the Sweetner Report, plaintiff's motion, insofar as it pertains to that report, is denied as moot.

The court must, nevertheless, consider plaintiff's request to add to the record in this case, the Frazier submission of November 24, 1982.

28 U.S.C. § 2640(c) empowers this Court to review a challenge to the Secretary of Labor's denial of certification of eligibility for trade adjustment assistance benefits in accordance with section 284 of the Trade Act of 1974. Section 284, in pertinent part, provides:

> "(a) such Secretary shall promptly certify and file . . . the record on which he based such [final] determination.
>
> "(b) The findings of fact by the Secretary of Labor . . . if supported by substantial evidence shall be conclusive; but the

court, for good cause shown, may remand the case to such Secretary to take further evidence . . . .

"(c) . . . ."

19 U.S.C. § 2395 (1982).

In *Abbott* v. *Donovan*, 3 CIT 54 (1982), this Court considered the question of the scope of review in trade adjustment assistance actions. There, plaintiff sought to supplement the record by adding decisions of a state unemployment appeals referee made subsequent to the Secretary's certification determination. The court, after examining the plain language of section 284, found that judicial review may only be had on the basis of "the record made before the administrative agency, viz, the Department of Labor." 3 CIT at 55. Thus, it concluded that the evidence offered, *i.e.*, the referee's decisions, was "patently outside the record prescribed in section 284 . . . , and beyond the scope of review contemplated by 28 U.S.C. § 2640(c)." *Id.*

Abbott teaches that the governing statutes contemplate a scheme of judicial review which is based on the record before the decision maker. While the facts of this case are distinguishable from those in *Abbott*, in that here plaintiff seeks to add information allegedly submitted to the Secretary prior to his determination, the applicable principle is the same. Therefore, since the administrative record did not include the Frazier submission of November 24, 1984, the court will not permit the record to be amended or supplemented as requested by plaintiff.

In view of the foregoing, plaintiff's motion to amend the administrative record is denied. However, as in *Abbott*, the court, pursuant to section 284(b), orders that this action be remanded to the Secretary of Labor for administrative reconsideration in light of plaintiff's offer of new evidence. Accordingly, it is hereby

ORDERED that plaintiff's motion to amend the record is denied; and it is further

ORDERED that this action is remanded to the Secretary of Labor for the purpose of allowing plaintiff to offer the Frazier submission on November 24, 1982, so as to permit the Secretary to reconsider the denial of certification in light of plaintiff's new evidence; and it is further

ORDERED that the Secretary shall report the results of his reconsideration to the court by February 28, 1985, and it is further

ORDERED that if, upon reconsideration, the Secretary affirms the denial of certification, then plaintiff shall file, by March 31, 1985, a motion for judgment upon the agency record pursuant to Rule 56.1 of the amended rules of this Court, effective January 1, 1985.

(Slip Op. 84-139)

NEPTUNE MICROFLOC, INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 81-12-01646

Before: CARMAN, *Judge.*

MEMORANDUM OPINION AND ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE SUMMONS AND DEFENDANT'S MOTION TO SEVER AND DISMISS

[Plaintiff's motion denied; defendant's motion granted.]

(Decided December 28, 1984)

Collier, Shannon, Rill & Scott (*David A. Hartquist, Steven Schaars,* and *Robert L. Meuser* on the motions) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Barbara M. Epstein* on the motions), for the defendant.

CARMAN, *Judge:* This matter is before the Court on plaintiff's motion for Leave To Amend the Summons. In addition, defendant has moved to sever and dismiss this civil action with respect to entry number 79-459145.[1] The issue before the Court is whether plaintiff's motion should be allowed, notwithstanding that the proposed amendment would add an entry number to the summons that was not the subject of the administrative protest before the United States Customs Service (Customs).

BACKGROUND

In 1979, plaintiff entered a shipment of ilmenite sand at Port Huron, Michigan. The entries were liquidated in early 1980 and plaintiff filed a timely protest contesting Customs' classification of the merchandise. Customs subsequently denied the protest.

During the course of the administrative proceeding, Customs issued a Notice of Proposed Rate Advance on October 29, 1979. This notice correctly listed plaintiff's entries, including entry number 79-459165. On its Final Notice of Rate Advance, however, Customs incorrectly listed this entry as 79-459145. This incorrect entry number was perpetuated both by plaintiff and by Customs throughout the remainder of the administrative process. Plaintiff then, evidently, transcribed this incorrect entry number when preparing its summons. The summons was filed on December 1, 1981. On November 17, 1982, however, the Clerk of the Court issued a notice to counsel stating that entry number 79-459165 was identifiable with the relevant protest and that the "entry [was] with [the] Court." Plaintiff's Motion to Amend Exhibit 5.

[1] Defendant had originally moved to sever and dismiss the action with respect to six other entries on the basis of plaintiff's lack of standing. Defendant has, however, withdrawn its motion as it pertains to those six entries. In addition, the parties have consented to a severance and dismissal with respect to entry number 80-316032, which is the subject of a separate action in this Court. *See Neptune Microfloc, Inc.* v. *United States,* No. 83-2-00306 (Ct. Int'l Trade Feb. 18, 1983). Plaintiff also has moved to consolidate the instant action with Court Number 83-2-00306. Defendant has opposed this motion because, in its view, consolidation is not appropriate during the pendancy of its motion to sever and dismiss in Court number 81-12-01646.

Plaintiff now moves to amend the summons filed on December 1, 1980, by substituting entry number 79-459165 for entry number 79-459145. The defendant opposes the motion, contending that, pursuant to 19 U.S.C. § 1514(c)(2)(A) (1982), liquidations are final unless protested within 90 days of the notice of liquidation. Moreover, according to defendant, since entry number 79-459165 was not protested, this Court lacks jurisdiction over the action with respect to that entry.

For the reasons noted below, the Court holds that it lacks jurisdiction over this action with respect to entry number 79-459165 and that, therefore, plaintiff's motion for leave to amend the summons must be denied.

DISCUSSION

It is fundamental that 28 U.S.C. § 2636(a)(1) (1982) requires that a civil action contesting the denial of a protest be filed in the Court of International Trade within 180 days after the mailing of a notice of denial of the protest. *Id.; see* 28 U.S.C. § 1581(a) (1982). It would seem, therefore, that because no protest was ever filed and denied with respect to entry number 79-459165, that entry could not properly be the subject of an action filed in this Court.

Rule 3(d) of the Rules of this court provides that "the court may allow a summons to be amended at any time . . . unless it clearly appears that material prejudice would result to the substantial rights" of a party.

Defendant contends that the requested relief would prejudice its substantial rights to the extent that any such amendment would nullify the finality and conclusiveness of liquidations.

The Court agrees with the defendant's position and holds that this action must be severed and dismissed with respect to entry number 79-459145. The effect of amending the summons would be to place "the entry covered by the summons at variance with the entry covered by the administrative protest." *Block Handbags, Inc.* v. *United States*, 82 Cust. Ct. 75, 76 (1979).

Each entry, although joined with others in a single protest, remains independent and gives rise to its own separate legal claim. *Border Brokerage Co.* v. *United States*, 72 Cust. Ct. 93, 99, 372 F. Supp. 1389, 1392 (1974); *E.S. Novelty Co.* v. *United States*, 68 Cust. Ct. 374, 376, 343 F. Supp. 1364, 1366 (1972). The Court of International Trade derives its exclusive jurisdiction over an action to contest the denial of a protest from 28 U.S.C. § 1581(a). In addition, 28 U.S.C. § 2636(a)(1) bars such an action if not commenced within 180 days after mailing of notice of denial of the protest. In short, because the plaintiff did not timely protest entry number 79-459165, no such protest was denied, and no civil action was commenced within 180 days of the denial of the protest, the Court lacks jurisdiction over this liquidated entry. Although under certain circumstances, the Court may, under rule 3(d), avoid overly technical ap-

plications of statutes and rules, *see, e.g., First, Miss, Inc.* v. *United States*, 7 CIT__ Slip Op. 84-14, at 2 (March 6, 1984), such is not the case here. The 180-day filing rule is an inflexible jurisdictional requirement.

The plaintiff's appropriate means of correcting the clerical error in the protest is found in 19 U.S.C. § 1520(c)(1) (1982):

> Notwithstanding a valid protest was not filed, the appropriate customs officer may . . . reliquidate an entry to correct— a clerical error, mistake of fact, or other inadvertence . . . when the error, mistake, or inadvertence is brought to the attention of the appropriate customs officer within one year after the date of liquidation or exaction;

But there is no indication in the pleadings that the plaintiff attempted to bring the error to the attention of Customs within the 1-year time period required by 19 U.S.C. § 1520(c)(1). Nor is there any indication, just as in *Block Handbags*, that plaintiff has sought to amend its protest in accordance with 19 U.S.C. § 1514(c)(1). The entry numbers as listed on the original protest have therefore been frozen at the administrative level, and the plaintiff's Motion to Amend the Summons must be denied.

Since it is clear from the pleadings and the notification from Customs that entry number 79-459145 is not identifiable with the plaintiff or the merchandise at issue, the defendant's motion to sever and dismiss as of this entry is allowed.

Conclusion

For the above stated reasons, plaintiff's motion to amend the summons is denied. Defendant's motion to dismiss this civil action with respect to entry number 79-459145 is granted.[2]

So ordered.

(Slip Op. 84-140)

ARBOR FOODS, INC., PLAINTIFF, *v.* UNITED STATES, ET AL., DEFENDANTS

Court No. 84-12-01722

Before: CARMAN, *Judge.*

MEMORANDUM OPINION ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

[Plaintiff's motion for a preliminary injunction denied; defendants' cross-motion to dismiss granted.]

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[2] Plaintiff has also moved to consolidate the instant case with Court Number 83-2-00306. Defendant opposed the consolidation solely because of the pendency of its motion to sever and dismiss. Given the disposition above, and because it appears that the two cases involve common questions of law and fact, plaintiff's motion for consolidation will be granted.

(Decided December 11, 1984)

Graubard, Moskovitz & McCauley (*Alfred R. McCauley on the motion*); *Dykema, Gossett, Spencer, Goodnow & Trigg* (*Norton Cutler* on the motion) for the plaintiff.
Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Michael P. Maxwell* and *Veronica A. Perry* on the cross-motion); (*Karen Binder* and *Beth Brothman*, Office of the Assistant Chief Counsel, International Trade Litigation, United States Customs Service, of counsel on the memorandum) for the defendants.

CARMAN, *Judge:* This matter is before me on plaintiff's motion for a preliminary injunction and defendants' cross-motion to dismiss. The issues presented by these motions include whether this Court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1581(i) (3), and (4) (1982), and, if jurisdiction does exist, whether the elements necessary for a preliminary injunction are present.

Plaintiff, an importer of sugar blends, seeks a preliminary injunction restraining the United States Customs Service (Customs) from requiring the segregation of the contents of blends of sugar containing 65 percent or less sugar by dry weight and subjecting the sugar to quota provisions.

After hearing argument on December 7, 1984, the Court denied plaintiff's application for a temporary restraining order. At the hearing for the preliminary injunction on December 11, 1984, the Court received evidence which was offered to establish irreparable injury. The evidence was relevant to whether the Court should exercise jurisdiction pursuant to 28 U.S.C. § 1581(i) as well as to whether plaintiff was entitled to preliminary injunctive relief. Ruling from the bench, the Court denied the motion for a preliminary injunction and granted defendant's cross-motion to dismiss declining to obviate the usual procedure of administrative protest that would occur by exercising jurisdiction under section 1581(i).

FACTS

Since December, 1981, the President has issued a number of proclamations establishing import fees and quotas on imported sugar.[1] The proclamations implemented a price support system for domestic sugar cane and sugar beets as required by Title IX of the Agriculture and Food Act of 1981, 7 U.S.C. § 1446(h) (1982). Specifically relevant to the current controversy are Proclamation 4941, issued May 5, 1982, and Proclamation 5071, issued June 28, 1983. Proclamation 4941 imposed quotas on imports of sugars classified under TSUS items 155.20 and 155.30, effectively foreclosing all importa-

[1] Explaining that the Secretary of Agriculture determined that sugars were being imported "in such quantities as to render or tend to render ineffective, or to materially interfere with the price support operations," Presidential Proclamation No. 4887, 46 Fed. Reg. 62,641 (1981), imposed import fees on all imports of sugars. Proclamation No. 4940, 47 Fed. Reg. 19,657 (1982), substantially increased the import fees imposed by Proclamation No. 4887. Proclamation No. 4941, 47 Fed. Reg. 19,661 (1982), imposed quotas on imports of sugars classified under TSUS items 155.20 and 155.30. Proclamation No. 5071, 48 Fed. Reg. 30,089 (1983), extended quotas to blended sugars classified under TSUS items 183.05, 183.01, 156.45 and 155.75.

tions of pure sugar. Proclamation 5071 extended the quotas to sirup and sugar blends classifiable under items 183.05, 183.01, 156.45, and 155.75 of the TSUS and containing over 65 percent sugar by dry weight.

During the period in which these proclamations were issued, the plaintiff imported products that were blends of sugar and other ingredients such as flour, dry dextrose, milk powder, and dry corn sirup solids.

To avoid subjection of its products to the quotas, the plaintiff began altering the mixture of certain blends in July of 1983 to ensure that they contained 65 percent or less sugar. Sometime in 1983 the plaintiff had also added a final step to its manufacturing process by screening blends immediately following entry of the merchandise and purveying the sifted sugar as a blend containing approximately 95 percent sugar. Plaintiff brought pure sugar from Canada into a foreign trade zone located within its warehouse in Toledo, Ohio. After mixing sugar and corn sirup solids in the foreign trade zone, the blend was entered into the Customs Territory of the United States. Once across the zone, the merchandise was immediately screened to separate the sugar from the corn sirup solids. The plaintiff has stated that the Customs Port Director was advised of the screening operation and he "subsequently permitted entry of 24,950 tons [of blends] which he knew Arbor [plaintiff] would screen and indeed probably saw Arbor screening." Affidavit of Clark Bien, at 3.

Exactly when Customs became aware of the screening practice is unclear. On November 6, 1984, the Office of Regulations and Rulings advised Customs officials by telex of the practice and directed that, henceforth, all "purported sucrose 'blends' will be considered commingled merchandise, pursuant to general headnote 7, TSUS," except those blends that "possess a valid commercial identity and which are actually used in commerce in the United States."

Subsequent to the November 6 directive, Customs denied entry of 360 tons of sugar and corn sirup solids blend from the foreign trade zone in plaintiff's Toledo warehouse.[2] The plaintiff filed no protest, but met with Customs officials on November 16, 1984, and requested a grace period to permit it to change its business practice to conform to the November 6 directive. The request was submitted in letter form on November 21, 1984, and denied by Customs on November 28, 1984. On November 14, 1984, Customs revoked all classification rulings issued prior to November 6, 1984, covering various sugar blends of plaintiff. The specific sugar/corn sirup solids blend at issue here has never been covered by a ruling issued to the plaintiff.

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[2] Neither party has specified in its pleadings exactly when the importation was attemped and denied.

OPINION

The threshold question presented by this action is whether this Court has subject-matter jurisdiction under 28 U.S.C. § 1581(i) (3), (4), notwithstanding that plaintiff has failed to avail itself of the administrative protest mechanism. Generally speaking, the United States Court of International Trade reviews "challenges to classification, valuation and entry of merchandise . . . pursuant to 28 U.S.C. § 1581(a) after the administrative remedies under 19 U.S.C. § 1514 and § 1515 have been exhausted." *Mast Industries, Inc.* v. *Regan*, 8 CIT __, Slip Op. 84-111, at 14 (Oct. 4, 1984). This Court, however, has on occasion asserted subject matter jurisdiction under 28 U.S.C. § 1581(i) in the absence of a denied protest. For example, in *United States Cane Sugar Refiners' Association* v. *Block*, 3 CIT 196, 544 F. Supp. 883, *aff'd*, 69 CCPA 172, 683 F.2d 399 (1982), a case involving quantitative restrictions on sugar imports, the Court held that subject matter jurisdiction existed under section 1581(i). There, judge (now Senior Judge) Newman found that to require the filing and denial of a protest would be tantamount to "insistence [on] a useless formality," since Customs officials would be powerless to vary from the challenged Presidential Proclamation. 3 CIT at 201, 544 F.Supp. at 887. The Court of Customs and Patent Appeals (now the Court of Appeals for the Federal Circuit) upheld this assertion of jurisdiction, adding:

> Respecting jurisdiction under § 1581(i), we note the provision of injunctive powers to the Court of International Trade in the Customs Courts Act of 1980 and the special circumstances of this case which, absent that provision, would have required Association to present its case to the District Court. We are persuaded that in this case, involving the potential for immediate injury and irreparable harm to an industry and a substantial impact on the national economy, the delay inherent in proceeding under § 1581(a) makes relief under that provision manifestly inadequate and, accordingly, the court has jurisdiction in this case under § 1581(i).

69 CCPA at 175 n.5, 683 F.2d at 402 n.5; *see also American Association of Exporters & Importers—Textile & Apparel Group* v. *United States*, 7 CIT __, 583 F. Supp. 591, 597 (1984), *appeal docketed*, No. 84-1060 (Fed. Cir. Apr. 13, 1984).

This case, however, does not present appropriate circumstances for dispensing with access to this Court through the traditional avenues contained in 28 U.S.C. § 1581 (a)-(h). Plaintiff's presentation, including evidence adduced at the hearing on the preliminary injunction, is not sufficient to persuade the Court that it should exercise subject-matter jurisdiction under section 1581(i) (3), (4). Nor has there been an adequate showing of irreparable harm or other special circumstances to justify avoiding the usual protest procedure provided by Congress. The plaintiff's proper avenue of recourse is by way of administrative protest pursuant to 19 U.S.C.

§§ 1514 and 1515. *See United States* v. *Uniroyal, Inc.*, 69 CCPA 179, 183–84, 687 F.2d 467, 472 (1982).

Although, in light of the above, it is not necessary to reach the questions presented in plaintiff's motion for a preliminary injunction, the Court nevertheless wishes to point out that plaintiff has not made a sufficient showing of harm in any event.

Plaintiff alleges injury in the forms of lost sales, lost benefits from past marketing, injury to its reputation as a reliable supplier, and the costs required for developing new products. Plaintiff also avers that it was forced to lay off 75 to 80 employees at its Toledo, Ohio plant and that plaintiff may be forced out of business altogether as a result of the actions of Customs. Plaintiff continues to hold the 360 tons of excluded blend in inventory and is also paying $600 per day demurrage on twelve railcars of sugar awaiting processing.

The exact nature of plaintiff's profits is, nevertheless, unknown. Its alleged injuries of lost benefits from past marketing and damage to reputation are not unlike those injuries alleged in *Manufacture de Machines du Haut-Rhin* v. *Von Raab*, 6 CIT, __, 569 F. Supp. 877, 881, *appeal dismissed*, No. 83–1341 (Fed. Cir. Dec. 29, 1983), which the court found to have been highly speculative.

Furthermore, expeditious administrative review is assured under 19 C.F.R. § 174.21(b) (1983), which requires that the district director act on the protest within 30 days of filing. The Court perceives no reason why the plaintiff's remedy of filing an administrative protest and seeking judicial review, should it be required, is inadequate. Had the plaintiff timely filed its protest and sought administrative review in the first place, it would now be in a position to seek judicial review if required.

Conclusion

For the foregoing reasons, the Court declines to exercise its subject-matter jurisdiction in this case. Given this determination, the defendants' cross-motion to dismiss must be, and hereby is, granted.

(Slip Op. 84–141)

NORTH AMERICAN FOREIGN TRADING CORP., PLAINTIFF, *v.* THE UNITED STATES, DEFENDANT

Before: RESTANI, *Judge.*

Court No. 82–1–00110

OPINION

[Plaintiff's motion for partial summary judgment denied; defendant's cross-motion for summary judgment granted.]

(Decided: December 28, 1984)

Fitch, King and Caffentizis (James Caffentzis), for plaintiff.

Richard K. Willard, Acting Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, *Jerry P. Wiskin,* Civil Division, United States Department of Justice, for defendant.

RESTANI, *Judge:* Plaintiff, and importer of solid-state electronic digital watches, has moved for partial summary judgment in this action seeking to invalidate Executive Order 12371, 47 Fed. Reg. 30449 (1982), on the ground that it was a retroactive withdrawal of duty-free status afforded plaintiff's merchandise under the Generalized System of Preferences, 19 U.S.C. §§ 2461–2465 (1982). Defendant United States has cross-moved for summary judgment urging the validity of the executive order. Defendant, however, conceeds that the merchandise should be reliquidated under TSUS 688.36 which is a new classification set forth in the executive order.

"The GSP is a trade program, established by Title V of the Trade Act of 1974 which authorizes the President to provide duty-free treatment for eligible articles from qualifying developing nations for the purpose of promoting their economic development." *Florsheim Shoe Co., Div. of Interco* v. *United States,* 744 F.2d 787, 788 (Fed. Cir. 1984) (footnote omitted). The President, however, is not given total freedom to select any product for GSP treatment. Among other things he is prohibited from granting duty-free status to either watches or import sensitive electronic devices. 19 U.S.C. § 2463(c)(1), (B) and (C) (1982).

Apparently, it was the practice of the Customs Service to routinely classify solid-state electronic digital watches under the applicable categories for watches, TSUS 716.18 and 715.05, until March 25, 1982. On that date, the Court of Customs and Patent Appeals decided that because the digital watches did not involve mechanical movement, the devices were not properly cassifiable as watches under TSUS 716.18 or 715.05 but rather under TSUS 688.45 as "electronic articles and parts thereof not specifically provided for." *United States* v. *Texas Instruments, Inc.,* 69 C.C.P.A. 136, 673 F.2d 1375 (1982). Accordingly, solid-state electronic digital watches might have received the GSP treatment available to items under TSUS 688.45 had the President not issued Executive Order 12371 which recalssified the digital watches in the new category of TSUS 688.36.

In issuing the executive order on July 12, 1982, the President stated that his purpose was to "clarify that certain import sensitive articles are and since the enactment of the Trade Act of 1974 have been precluded from eligibility for duty-free treatment pursuant to Section 503(i)(1) [19 U.S.C. § 2463 (1982)] of the Trade Act. . . ." 47 Fed. Reg. 30449. The executive order was to affect "articles entered, or withdrawn from warehouse for consumption, on or after the day following the date of [the] Order, and for all articles previ-

ously entered for which liquidation has not been made final as of such date." 47 Fed. Reg. at 30450.

Plaintiff argues that the President did not follow the statutorily mandated procedure in withdrawing GSP status. The statute which governs withdrawal of duty-free treatment is section 504(a) of the Trade Act of 1974, 19 U.S.C. § 2464 (1982).[1] That section provides:

> The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 2461 of this title with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this subchapter. In taking any action under this subsection, the President shall consider the factors set forth in section 2461 and 2462(c) of this title.[2]

The President did not purport to comply with § 504(a) because he did not believe he was withdrawing GSP status. Rather, he believed he was clarifying existing status.

The intent of the Trade Act of 1974 was to exclude watches from GSP treatment because they are import sensitive. S. Rep. No. 1298, 93rd Cong., 2d Sess. 42, 224, *reprinted in* 1974 U.S. Code Cong. & Ad. News, 7216, 7354. the C.C.P.A. in *Texas Instruments* at 1375, n. 1 indicates that solid state electronic watches are "watches" in common and commercial meaning. There is no evidence before the court which would lead one to conclude that Congress, in either the statute or the legislative history, was using the term "watches" in other than a common or commercial sense. To the contrary 19 U.S.C. § 2463 specifically refers to items of the tariff schedules with regard to footwear, but omits reference to the tariff schedules with regard to textiles, electronic articles, steel, and watches.[3] Therefore, the court finds that Congress did not intend the GSP status of solid-state digital watches to depend on the tariff schedule meaning of "watches".[4]

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[1] Plaintiff's reliance on Part 3 of the Trade Act of 1974, 19 U.S.C. § 2151 *et seq.*, which calls for hearings and advice to the President in connection with trade agreements is inapposite.

[2] 19 U.S.C. § 2461 provides:

> The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for—
>
> (1) the effect such action will have on furthering the economic development of developing countries;
>
> (2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries; and
>
> (3) the anticipated impact of such action on United States producers of like or directly competitive products.

Section 2462(c) concerns only the selection of countries, rather than products, for treatment under the GSP program and is therefore not relevant to this case.

[3] Under General headnote 3(c)(ii) to the tariff schedules, the goods at issue would have received GSP treatment because item 688.45, the classification applicable under *Texas Instruments*, was preceded by the letter "A" signifying such treatment. But the general headnotes must be read together with the remainder of the statute and in accordance with Congressional intent. If the literal words of the general headnotes conflict with obvious statutory intent, they will be disregraded. *See Bob Jones University* v. *United States*, X U.S. X— 103 S.Ct. 2017, 2025 (1983); *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 460 (1892); *Ambassador Division of Florsheim Shoe* v. *United States, et al.*, Appeal No. 84-814 at 9 (Fed. Cir. November 19, 1984.

[4] We have before us the uncontradicted statement of the United States that at the time of enactment of the Trade Act of 1974 the practice of the Customs Service was to classify digital watches as "watches". It is clear from *Texas Instruments* that this was the practice in the years immediately before that decision. Plaintiff argues, however, that this practice may not have been known to Congress in 1974. Because the court finds that Congress did not define "watches" according to the tariff schedules, it is irrelevant whether Congress knew of Customs' interpretation of the tariff schedules.

In one sense the part of Executive Order 12371 at issue was not necessary because GSP status for digital watches never existed. (Of course, in a practical sense the order was necessary to end the confusion existing after the *Texas Instruments* case.) Since the Executive Order did not withdraw GSP status, § 504(a) was not applicable. The President was simply not free to make the determinations contemplated by § 504(a). His course was dictated by 19 U.S.C. § 2463(c)(1)(B), excluding watches from the GSP program.

One of plaintiff's principal arguments is based on *Teters Floral Products Co.* v. *United States*, 7 CIT__, 586 F.Supp. 960 (1984). Plaintiff claims that the duty-free status of its goods was fixed at the time of entry and that the executive order was thus an attempt to retroactively alter a vested right to GSP treatment.[5] Since there was no preexisting right to GSP treatment this argument fails. The court notes, however, that plaintiff misreads the court's decision in *Teters*. That case held that if Congress wished to mandate a change in the ordinary rule fixing the status of duties at the time of entry. Congress would have made the mandate explicit. The case did not decide that duty status is always fixed at entry or that Congress has prevented the President from altering the ordinary rule regarding the time of fixing of duty status when the President is performing legislative functions. In Executive Order 12371 the President acted for Congress in establishing a different time than entry for fixing the duty status of solid-state electronic digital watches.

Along this line plaintiff also argues that Congress itself must specifically state that it intends legislation to be retroactive in order for such legislation to be upheld. Once again this argument is inapposite because the executive order did not have the type of retroactive effect plaintif alleges. Nonetheless, once Congress delegates authority to the President, it is the President's intent alone which determines whether an executive order is to be retroactive. *Sea-Land Service, Inc.* v. *I.C.C.*, 738 F.2d 1311, 1314 (D.C. Cir. 1984).

Since no material factual disputes prevent entry of judgment, judgment will be granted pursuant to Court of International Trade Rule 56. Accordingly, the court finds Executive Order 12371 valid. The parties have agreed through the pleadings that the subject articles are therefore properly classifiable under TSUS 688.36. The Customs Service is thus directed to refund the difference between the original assessed duties and the correct duties with interest from date of summons to date of payment pursuant to 28 U.S.C. § 2644 (1982), and defendent's motion for summary judgment is hereby GRANTED.

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[5] Under the executve order the duty status of plaintiff's goods was not fixed. *See* Executive Order 12371, 47 Fed. Reg. at 30450, making merchandise entered, but for which no entries had been liquidated, subject to the executive order. Liquidation of plaintiff's merchandise was not final because a protest and civil action were filed. 19 C.F.R. § 159.1 (1984).

Decisions of th
Court of Inter

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The following abstracts of decisions of the Unite
published for the information and guidance of office
decisions are not of sufficient general interest to print
to customs officials in easily locating cases and tracing

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	PROTEST ASSESS ITEM NO. RATI
P84/382	Re, C.J. December 18, 1984	J.C. Penney Purchasing Corp.	83-9-01367	Not stated
P84/383	Re., C.J. December 18, 1984	J.C. Penney Purchasing Corp.	83-9-01391	Not stated

the United States
ternational Trade

Abstracts

DEPARTMENT OF THE TREASURY, *December 28, 1984.*

Jnited States Court of International Trade at New York are officers of the customs and others concerned. Although the print in full, the summary herein given will be of assistance acing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

TEST DECISIONS

ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
EM NO. AND RATE	ITEM NO. AND RATE		
stated	Item 685.24 8.8% for radios Item 684.70 6.5% for headphones	Judgment on the pleadings	San Francisco Radios with headphones
stated	Item 737.07 6.9%	Judgment on the pleadings	Savannah Various models of tractor trailers

Index

U.S. Customs Service

Treasury Decisions

U. S. GOVERNMENT PRINTING OFFICE: 1985 O 464-349